IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4062 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DUNGARBHAI L RATHOD - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR SP HASURKAR for Petitioner(s) : 1,
MR LB DABHI, AGP for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 04/02/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India, praying for quashing and setting aside the suspension order 18.1.1993. The petitioner has also prayed for quashing and setting aside

transfer order of transferring the petitioner from Gadh Police Station to Varahi Police Station. The petitioner has also prayed for the direction to the respondent authorities not to initiate any departmental proceedings against the petitioner. The petitioner has further prayed for the direction to the respondent to pay to the petitioner subsistence allowance during the pendency and final disposal of the petition.

2. Initially, this petition was filed by Mr.S.P.Hasurkar, the learned advocate, on behalf of the petitioner. However, Mr.Hasurkar has now become Asstt.Govt.Pleader and hence he cannot appear against Government. Fresh notice is to be issued to the petitioner. However, since the Court is allowing petition, there is no need to issue fresh notice to the petitioner. The petition is, therefore, taken

up for hearing.

3. The petition was admitted and rule was issued on 14.6.1993. While considering the question of interim relief this Court has observed that the order of suspension was issued simply because the petitioner went on strike. It prima facie appears that the order of suspension for the petitioner having gone on strike for about 12 hours was not justified. The petitioner has remained under suspension since February. No charge-sheet was framed. The Court was therefore of the view that there was ample justification for directing that further operation of the suspension be stayed. The Court, therefore, directed that further operation of the impugned suspension order be stayed and the petitioner be allowed to resume work and be treated as on duty forthwith.

4. Mr.L.B.Dabhi, learned AGP appearing for the respondent has pointed out that pursuant to the aforesaid order passed by this Court on 14.6.1993, the District Superintendent of Police has passed an order on 6.2.1995. The said order is taken on record. It is stated in the said order that period during which the petitioner remained under suspension is considered as period during which the petitioner is on duty. It is also stated that the petitioner has resumed his duty at Varahi Police Station, the place where the petitioner was transferred on 29.6.1993.

5. In above view of the matter, nothing survives in this petition. Since the impugned suspension order was recalled and suspension period was considered as period of regular service, the petition is accordingly allowed. Rule is made absolute without any order as to

costs.

kks (K. A. PUJ, J.)